

**IN THE UNITED STATES DISTRICT COURT FOR  
THE MIDDLE DISTRICT OF ALABAMA  
NORTHERN DIVISION**

<b>UNITED STATES OF AMERICA</b>	)	
	)	
<b>V.</b>	)	<b>CR. No.: 2:05-cr-171-T</b>
	)	
<b>CALVIN ARTIS STEWART, JR.</b>	)	

**MOTION TO SUPPRESS STATEMENT**

**COMES NOW** Calvin Artis Stewart, Jr., by and through undersigned counsel, Kevin L. Butler, and moves to suppress his March 18, 2005, statements to Chief Kelvin Mitchell of the Hayneville Police Department.

In support of this motion the defendant states:

- 1) On March 18, 2005, the vehicle driven by Mr. Stewart was stopped Hayneville Police Chief Kelvin Mitchell and Hayneville Police Officer Benny Merritt.<sup>1</sup>
- 2) The vehicle was stopped based upon the officers' belief the driver had committed traffic violations. After the vehicle stop and while the officers where investigating the traffic violation, the car and its occupants were not free to leave.
- 3) After Officer Mitchell approached the vehicle, Mr. Stewart (the vehicle driver) requested an attorney and requested the presence of his mother.
- 4) Ignoring this request, Chief Mitchell investigated the basis for the stop, questioned Mr. Stewart, and conducted a pat down search of Mr. Stewart.

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<sup>1</sup> Mr. Stewart is not challenging the stop of the vehicle or the subsequent search of the vehicle.

- 5) During the pat down search an unregistered firearm was located on Mr. Stewart's person and he was arrested. Subsequent to his arrest, police located narcotics within the vehicle.
- 6) In spite of the fact Mr. Stewart had requested counsel immediately after being detained, Mr. Stewart was further questioned by Chief Mitchell at the police station. Pursuant to this questioning, Mr. Stewart confessed to possessing the firearm and narcotics seized by police.
- 7) Police questioning must cease after an individual detained by police has invoked his right to counsel. *Arizona v. Robertson*, 486 U.S. 675 (1988); *Edwards v. Arizona*, 451 U.S. 477 (1981); *Isaacs v. Head*, 300 F.3d 1232,1962 (11<sup>th</sup> Cir. 2002); *Eight v. Singletary*, 50 F.3d 1539, 1548 (11th Cir.1995) .
- 8) Immediately upon his detention, Mr. Stewart invoked his right counsel. Though the police's investigation of the "scene" could continue, police questioning of Mr. Stewart should have ceased, until counsel was provided. However, Chief Mitchell conducted consistent and continued questioning of Mr. Stewart after Mr. Stewart had requested counsel. Pursuant to this improper questioning an inculpatory statement was obtained.
- 9) As this questioning was prohibited, all the statements obtained after Mr. Stewart requested counsel must be suppressed.

WHEREFORE, the Defendant prays that all statements obtained from Calvin Artis Stewart on March 18, 2005 be suppressed.

Respectfully submitted,

s/ Kevin L. Butler  
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**CERTIFICATE OF SERVICE**

I hereby certify that on October 20, 2005, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following:

Kent Brunson, Esquire  
Assistant United States Attorney  
One Court Square, Suite 201  
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Respectfully submitted,

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